IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

FAO.No. 239 of 2007()

AGAINST THE ORDER DATED 31/05/2007 IN IA. 35/2007 IN LAR.44/2004 of SUB COURT, HOSDRUG

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APPELLANTS/APPLICANTS/CLAIMANTS

1. JANAKI, W/O. LATE GANGADHARAN, RESIDING AT MUNDAKANDAM,CHERUVATHUR VILLAGE, HOSDURG TALUK,KASARGODE DISTRICT.

2. T.JAYARAJAN, S/O. LATE GANGADHARAN, RESIDING AT MUNDAKANDAM,CHERUVATHUR VILLAGE, HOSDURG TALUK, KASARGODE DISTRICT.

3. T.SARALA, D/O. LATE GANDADHARAN, RESIDING AT MUNDAKANDAM,CHERUVATHUR VILLAGE, HOSDURG TALUK, KASARGODE DISTRICT.

4. T.SHOBANA, D/O. LATE GANGADHARAN, RESIDING T MUNDAKANDAM, CHERUVATHUR VILLAGE, HOSDURG TALUK, KASARAGODEN DISTRICT.

5. T. CHANDRAN, S/O. LATE GANGADHARAN, RESIDING AT MUNDAKANDAM, CHERUVATHUR VILLAGE, HOSDURG TALYK, KASARGODE DISTRICT

6. T.AJITHA, D/O. LATE GANGADHARAN, RESIDING AT MUNDAKANDAM, CHERUVATHUR VILLAGE, HOSDURG TALUK, KASARGODE DISTRICT.

7. T.MINI, D/O. LATE GANGADARAN,RESIDING AT MUNDAKANDAM, CHERUVATHUR VILLAGE, HOSDURG TALUK KASARGODE DISTRICT.

8. T.SARITHA, D/O. LATE GANGADHARN, RESIDING AT MUNDAKANDAM, CHERUVATHUR VILLAGE, HOSDURG TALUK, KASARGODE DISTRICT.

BY ADV. SRI.JAWAHAR JOSE
SMT.CISSY MATHEWS

RESPONDENT:

THE SPECIAL TAHAZILDAR (LA)
HOSDURG, KASARGODE DISTRICT.

BY GOVERNMENT PLEADER SIR V.T.K. MOHAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

F.A.O.NO.239 OF 2007

Dated this the 28th day of September, 2007

JUDGMENT

Raman, J.

This is an appeal arising out of the order dated 31/5/2007 in I.A.No. 35/2007 in LAR.No.44/2004 on the file of the Sub Court, Hosdrug. By the impugned order in this appeal the court below dismissed the I.A. 35/2007 filed under Order 9 Rule 9 of the C.P.C. for setting aside the ex parte order dated 24/11/2006.

2. LAR.No.44/2004, in which there were 8 claimants, was posted for trial on 24/11/2006 on which day the 1st appellant was absent and the reference was answered setting the claimants ex parte. The lst appellant gave evidence as PW-1 and Ext.A1 was marked. No evidence was adduced by the respondent. According to the lst appellant, she was ill and bedridden for the period from 21/11/2006 to 28/11/2006. The case was called and disposed of on 24/11/2006. Ext.A1 is the medical certificate issued by the doctor. The court below however dismissed the application on the ground that there are 8 claimants and non of the remaining claimants appeared before the court below on the

crucial date or contacted their Advocate for getting adjournment or removal of the case from the list and no explanation in this regard is offered by the applicants. The doctor was also not examined. The lst appellant also did not produce the medical bills and the prescription. It is in these circumstances that the application was dismissed.

3. The definite case of the lst appellant is that she was conducting the land acquisition reference for all other claimants and a power of attorney was also executed by all the other claimants in her favour and the same was also produced before the reference court on 5/6/2004 as per the interlocutory application. Even permission was sought for conducting the case by the lst appellant for and on behalf of all others which was accorded by the reference court. Since she was conducting the case on behalf of all others with the permission of the court and based on the power of attorney executed by all others, the fact that the remaining claimants did not seek for an adjournment could not have been made a ground for rejecting the application to set aside the ex parte decree passed against the appellants herein. Further according to them, the case was posted for trial on 24/11/20-06 on the day on which the lst appellant was under treatment for rheumatic complaint in the Dhanwanthari Ayurvedic Nursing Home, Cheruvathur. She has

produced Ext.A1 and tendered evidence as PW-1. In the circumstances, it is pleaded that at least on terms the court below ought to have allowed the application.

4. We have heard both sides.

5. Admittedly, Ext.A1 medical certificate produced in the case shows that the lst appellant was suffering from Rheumatic complaint and was advised to take rest for over a week. She also gave evidence as PW1. It is true that she did not examine the doctor. But there was no contra evidence tendered by the respondent in this case. The fact that the remaining claimants did not seek for an adjournment could not have been made a ground for rejecting the application filed by the lst appellant herein without adverting to the fact that the lst appellant was the only person, who was authorised by the remaining claimants to conduct the case for and on behalf of them, which, according to the lst appellant, was also accepted by the court below in application filed along with the power of attorney produced. If so, the court below could have taken a lenient view and allowed the application on terms. In these circumstances, we set aside the order passed by the court below and allow this Appeal on terms.

6. Accordingly, there will be a direction that in case the appellant pays an amount of Rs.2000/- (Rupees two thousand) for payment to the respondent by depositing the amount before the court below within a period of three weeks from today, the order impugned in this appeal will stand set aside, failing which the appeal will stand dismissed.

Appeal is allowed as above.

Issue emergent copy.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.